

# Exhibit 89

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

CSX TRANSPORTATION, INC.,  
individually and on behalf  
of NORFOLK & PORTSMOUTH CIVIL ACTION  
BELT LINE RAILROAD FILE NO.  
COMPANY, 2:18-cv-530-MSD-LRL  
Plaintiffs,  
vs.  
NORFOLK SOUTHERN RAILWAY  
COMPANY, et al.,

Defendants.

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DEPOSITION OF  
THOMAS HURLBUT  
1:00 p.m.  
February 21, 2020

600 Peachtree Street  
Suite 3000  
Atlanta, Georgia

Susan M. Pitts, CCR-B-1806, RPR

Job No. CS3990713

1 document before today?

2 A. The -- I'm not sure if I have. It's  
3 the -- some of the -- reading it today, some of it  
4 sounds familiar, but I cannot tell you if that's  
5 because I saw the document or because Cannon spoke  
6 about it at a board meeting.

7 Q. Do you recall if you had any discussions  
8 with Mr. Moss before April 5th, 2018 about the  
9 contents of his e-mail to Mr. DiDeo?

10 A. I did not.

11 Q. Other than receiving the e-mail and  
12 whatever was discussed at a board meeting, did you  
13 have any discussions with Mr. Moss about this -- his  
14 response?

15 A. Other than receiving e-mails from Cannon  
16 Moss, yeah, I don't know that I received this e-mail.  
17 So apart from e-mails from Cannon and items on a  
18 board docket, I did not have any discussion outside a  
19 board meeting about this.

20 Q. Did you ever discuss the CSX rate proposal  
21 with anyone at Norfolk Southern?

22 A. No.

23 Q. The very last bullet point, Mr. Moss  
24 writes: NPBL management has reviewed the proposed  
25 rate and would recommend to the board for a rate

1 committee to do a complete review of the tariff.

2 From your -- well, the next board meeting,  
3 I think, was April 28th, maybe? Well, I'm sorry, let  
4 me be specific. April 18th of 2018. Do you know if  
5 that was discussed at the April 18th, 2018 board  
6 meeting, conducting a tariff review or having a  
7 committee do it?

8 A. I do not recall anything being presented  
9 to the board for their -- as an action item. I am  
10 not sure if anyone mentioned a rate committee at the  
11 meeting.

12 Q. Then is it fair to say to the best of your  
13 recollection, the board did not vote to form a rate  
14 review committee?

15 A. To my recollection, the board did not vote  
16 to form a rate committee.

17 Q. At the conclusion of the April 18th, 2018  
18 board meeting, if there was a rate committee, is it  
19 fair to say you were not on it?

20 A. I can tell you I've never served on a rate  
21 committee.

22 MR. McFARLAND: Next one, folks on the  
23 line, is NSR00076482.

24 (Exhibit 15 was marked for identification.)

25 Q. (By Mr. McFarland) Do you recognize the